UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT

In re:
DORIS LOUISE MEADOWCROFT,
Debtor.

Chapter 7 Case
 # 04-10635

ORDER

GRANTING IN PART AND DENYING IN PART
CHASE MANHATTAN BANK'S MOTION FOR LIMITED RELIEF FROM JUDGMENT AND IMPOSING SANCTIONS

On May 21, 2004, Chase Manhattan Bank ("Chase") filed a motion for relief from stay against the Debtor's homestead property in Wilmington, Vermont (doc. #4) (the "Motion for Relief"). After several hearings and adjournments, on December 23, 2004, Chase and the Debtor (the "Parties") filed a stipulation with the Court (doc. # 32) evidencing an agreement that resolved the Motion for Relief. The Court approved the stipulation by order entered January 3, 2005 (doc. # 33) (the "Stipulation Order"). The Stipulation Order included a declaration of the exact amount the Debtor owed to Chase and established the course of dealing the Parties would follow in the future. It appeared that the Stipulation Order put the Parties' dispute to rest.

However, questions arose about whether Chase and its agents were adhering to the Stipulation Order. On May 10, 2005, in response to a letter from the Debtor, the Court held a hearing to determine whether Chase and its servicing agent, Select Portfolio Servicing Inc. ("SPS"), had complied with the Stipulation Order, and in particular whether they were applying the Debtor's payments as agreed and reporting to the credit reporting agencies that the Debtor was current under the modified terms of the loan which were set forth in the Stipulation Order.

After hearing arguments from the Debtor *pro se* and Chase's counsel, the Court entered a ruling which was memorialized in an Order dated May 11, 2005 (doc. # 43) (the "May 11th Order"). This Order reiterated the terms of the modified agreement between the Parties, specifying that:

1. As of December 20, 2004, the loan had an outstanding balance of $98,733.07, consisting of the principal balance in the amount of $89,825.01 plus interest accrued through November 30, 2004 in the amount of $8,908.06.

2. The loan would be recapitalized so that outstanding balance would be paid over remaining life of loan.

3. The Debtor would resume regular monthly payments on recapitalized loan balance beginning on January 5, 2005 and continuing on the 5th day of each month for the term of the existing note (i.e., through April 1, 2028).

4. The mortgage payments on the recapitalized loan balance, beginning on January 5, 2005 would be $905.07 per month.

5. All outstanding loan charges, penalties and enforcement costs assessed by the lender through January 1, 2005 would be cancelled and waived.

May 11th Order at p. 2. The May 11th Order also directed Chase to do the following no later than 5:00 P.M. on May 13, 2005, or be subject to the imposition of sanctions at $200 per day: (1) file and serve on the Debtor a certification of its compliance with the Stipulation Order; and (2) provide a letter indicating that the subject mortgage has been reinstated and the Debtor is current for the period from May 2004 through May 2005, in a form that the Debtor can send to potential lenders (as she seeks to refinance the Chase debt) accompanied by an amortization schedule consistent with the balance due and repayment terms articulated in the Stipulation Order. It also allowed Chase to seek relief from these directives in the event Chase found that its records did not support an unequivocal statement that the Debtor was current, or could not, for some valid reason, issue the requisite certification within the timeframe set forth in the May 11th Order, provided it requested such relief by May 13th.

On May 13, 2005, Chase filed a motion for limited relief from judgment (doc. # 44) (the "Judgment Relief Motion"), stating it needed relief of two sorts. First, Chase requested relief from the Stipulation Order to increase the monthly payment or include a balloon payment at maturity, as follows:

> As set forth in creditor's Affidavit there was an error in the initial calculation of the monthly payment necessary to fully amortize the subject loan over the agreed upon loan term. The parties stipulated, and this Court Ordered, the monthly mortgage payment to be $905.07. Due to a computational error, this payment amount does not fully amortize the loan. Applying this payment amount to the remaining term of the loan results in a balloon payment of $7,890.46 due at maturity. The actual amount necessary to fully amortize the loan is $6.66 per month greater. That is, a monthly payment of $911.73.
> . . .
> Secondly, secured creditor respectfully and regretfully requests limited relief from the January 2, 2005 Order [sic] as it relates to the balloon payment. The January 2, 2005 Order, [sic] and the party stipulation simply state that the loan matures on April, 2028. The Stipulation and Order are silent as to whether the loan will be paid in full on that date. Secured creditor requests a modification to the January 2, 2005 Order [sic] specifically allowing for the collection of the balloon payment referenced herein. This stipulation and January 2, 2005 Order [sic] are mathematically incorrect due to a mistake made by creditor. Secured creditor requests limited relief with Order to correct this mistake.

Judgment Relief Motion p. 1. Although not expressly set forth as such, the Court construes the request for relief from the Stipulation Order to constitute a motion for relief under Fed. R. Bankr. P. 7024. Additionally, Chase requested relief from the May 11th Order for a brief extension of time such that its delivery of the requisite documents to the Debtor by May 17th would constitute timely performance and relieve it from the imposition of sanctions.

On May 17, 2005, the Debtor objected to the Judgment Relief Motion alleging that Chase had failed to fully comply with the May 11th Order and opposing Chase's Judgment Relief Motion (doc. # 46) (the "Debtor's Objection").

Later that same day, Chase responded to the Debtor's Objection indicating that it had forwarded information to the Debtor via electronic mail on May 16, 2005 and if the due date were moved to May 17th, as it requested, Chase would be in full compliance with the May 11th Order (doc. # 48). On May 18, 2005, the Debtor filed another objection stating that although she had received photocopies of the documents from Chase, Chase had not complied with the May 11th Order because the documents were neither originals nor timely (doc. # 49). Additional letters have been filed by Chase and the Debtor asserting compliance/non-compliance with the May 11th Order (docs. ## 50 and 51, respectively).

Upon consideration of the Judgment Relief Motion, the Debtor's Objection and the entire record in this case, the Court finds that while Chase has demonstrated sufficient grounds for the extension of time it seeks, even with that extension of time it is not in substantial compliance with the May 11th Order; and that there is no basis to allow Chase to modify the terms of repayment of this loan from those set forth in the Stipulation Order.

Relief from the May 11th Order Timeframe

With regard to the extension of time the Court finds:

- Chase provided the Debtor with the requisite information via electronic mail, and subsequently, via regular mail in a reasonably prompt manner;
- the slight delay in the delivery of the information to the Debtor via regular mail is excusable;
- SPS has set forth a sufficient explanation and justification for this delay;
- the affidavit of Ryan Hudgens, of SPS, submitted on behalf of Chase with the Judgment Relief Motion, (the "Affidavit") is in a form that can be submitted to potential lenders and recorded in the appropriate land records to reflect the modification of the original loan; and
- Chase's motion for extension of the subject deadline was filed by the due date annunciated in the May 11th Order and sets forth good cause.

Therefore, Chase is granted relief with respect to the date by which certification of compliance was due.

Relief from the Directives of the May 11th Order

While the Court grants Chase's requested relief as to the timeframe, this does not mitigate Chase's obligation to have delivered to the Debtor a certification that Chase modified the terms of the loan to reflect the terms of the Stipulation Order and to have issued a corresponding and correct amortization schedule by the extended due date. The Court finds that the Affidavit, offered as the putative certification Chase was required to provide under the terms of the May 11th Order, fails to accurately and fully set forth the terms of the modified loan, and is in fact at odds with the loan repayment terms articulated in the

Stipulation Order. In particular, the Affidavit fails to set forth several pieces of critical information, such as the date on which the balance due is calculated, and the fact that the loan is paid in full upon the payment to be made in April, 2028. Instead, the Affidavit indicates that, due to a mathematical error, Chase has prepared an amortization schedule that adds a balloon payment at the end of the term in order to produce sufficient funds to retire the debt. These terms are contrary to the Stipulation Order and support the Court's finding that, to date, Chase has not modified the Debtor's loan to conform to the terms of its own stipulation; and has consequently not been able to publish a certification of compliance with the Stipulation Order. The Affidavit "certification" fails to give the Debtor an unequivocal statement that her loan has been modified consistent with the stipulation between the Parties and in fact, indicates that Chase now proposes to modify the loan in a manner that is inconsistent with the Stipulation Order.

The Affidavit states that the Debtor has made all required payments timely from April 2004 to May 2005. Affidavit at ¶ 8. Accordingly, the terms of the modified loan as of May 2005 should accurately reflect that either the Debtor's payments from January 2005 forward have decreased the recapitalized principal balance or indicate that the recapitalized principal balance was $98,733.07 as of December 20, 2004 and the Debtor has made all payments due since that date. While under different circumstances the Court might infer an oversight in not including the date in the Affidavit, the record in this case does not support such an inference. Nearly five months have passed since the Parties entered into the agreement that underlies the Stipulation Order and Chase has still not produced evidence that it has complied with the Stipulation Order and abided by the terms of its agreement with the Debtor. In fact, Chase now seeks to alter the terms of the Stipulation Order by providing the amortization schedule that requires a balloon payment of $7,890.46 upon the maturity date of the loan. No such balloon payment was contemplated by the Stipulation Order.

The Court finds that Chase has not yet complied with the May 11th Order as it has not yet filed a certification that demonstrates it has modified the Debtor's loan in accordance with the terms of the Stipulation Order.[1] Therefore, the Court directs that Chase pay sanctions to the Debtor, pursuant to the May 11th Order, in the amount of $200 per day from the date of this Order through the date Chase complies with the May 11th Order. To be in compliance, Chase must certify that it has modified the Debtor's loan in accordance with the terms agreed to by the Parties and approved by the Court in the Stipulation Order, specifically articulating the five items listed above, as well as the effective date of the modification and the current balance due (reflecting credit for payments made from January through May 2005 and the credit ordered herein); and be in a form that can be recorded in the Vermont land records.

[1] The purpose of this Court's May 11th Order was clear: Chase was to certify to the Court and the Debtor that it has complied with the terms of the Parties' stipulation as approved in the Stipulation Order. Rather than certifying that it had indeed complied with those terms and then moved subsequently for relief from those terms, Chase provided a certification seeking to explain why it has not complied with either the May 11th Order and the Stipulation Order and why it should be permitted to change the terms of the Parties' agreement.

Relief from the Stipulation Order

In addition to seeking relief from the May 11th Order in the Judgment Relief Motion, Chase also seeks relief from the Stipulation Order asserting that Chase wants to modify the terms it previously agreed to, either by increasing the monthly payment or adding a balloon payment upon maturity of the loan. Chase argues that this additional modification is necessary and fair because the current repayment terms are insufficient to pay the debt in full, and this is due to a mathematical error it made in computing the repayment terms set forth in the stipulation.

Under Federal Rule of Civil Procedure 60(b), made applicable hereto by FED. R. BANKR. P. 9024, a party may move for relief from a final judgment based upon mistake within a reasonable time. FED. R. CIV. P. 60(b) ("the motion shall be made within a reasonable time, and …not more than one year after the judgment, order, or proceeding was entered or taken"). What constitutes a "reasonable time" is well within this Court's discretion. SEC v. McNutty, 137 F.3d 732, 738 (2d Cir. 1998). Under the circumstances of this case, the Court finds that Chase has failed to offer any compelling explanation for their five month delay in discovering the mathematical error and seeking relief from the Stipulation Order on that basis. Chase had ample time to consider, compute and present the balance due figures and repayment terms to the Debtor and this Court.

Further, Chase is estopped from raising its challenges five months after entry of the Stipulation Order. A party to a settlement may be estopped from objecting thereto once another party to the settlement has relied, to its detriment, on the first party's failure to object to the settlement terms. Adams v. Johns-Manville Corp., 876 F.2d 702, 706-07 (9th Cir. 1989). Since January 5, 2005, the Debtor, in reliance upon the Parties' stipulation has made payments to Chase in accordance with the stipulated terms. Chase may not now change those terms. As a financial institution, Chase has a duty to keep meticulous records and produce accurate statements of account upon demand. Moreover, it is significant that Chase presented the current repayment terms in the context of a settlement and it has derived the benefit of not having to litigate the Motion for Relief. The Court also takes into consideration that the Debtor's primary complaint throughout this contested matter has been Chase's failure to provide her with timely and accurate information about her loan, and all of the orders entered in this case since the filing of the Motion for Relief have focused on Chase's obligation to do so. For all of these reasons, the Court concludes that it would be unjust to allow Chase to modify the Stipulation Order at this time. Once the stipulation was entered into and approved by the Court, the Parties were bound by the terms set forth in the stipulation. They must adhere to it. Consequently, that portion of the Judgment Relief Motion which seeks relief from the Stipulation Order is denied.

Accordingly, IT IS HEREBY ORDERED that:

1. The Judgment Relief Motion is granted in part and denied in part.
2. The Judgment Relief Motion is granted to the extent that Chase seeks to extend the deadline for providing the Debtor with the information set forth in the May 11th Order.
3. The Judgment Relief Motion is denied to the extent that Chase seeks to either amend or modify the Stipulation Order in any way, including to increase the monthly loan payment or to change the terms of the final payment.
4. The Judgment Relief Motion is also denied to the extent Chase seeks a determination that it is in compliance with the May 11th Order if the extension of time is granted.
5. To the extent that Chase miscalculated the amount due, Chase is hereby directed to credit the Debtor's account in that amount immediately, or adjust her account as is necessary, so that her compliance with the terms set forth in the Stipulation Order will pay the loan in full by April 2028.
6. Chase is further directed to pay the Debtor $200.00 per day from the date of this Order until Chase complies with this Court's May 11th Order by unequivocally certifying that the Debtor's loan has been modified such that it will be repaid according to the terms set forth in the Stipulation Order, as more fully specified above.
7. A status conference in this matter will be held on **June 28, 2005 at 10:00 A.M.** at the United States Bankruptcy Court, Opera House, 67 Merchants Row, Rutland, Vermont to determine:
   (a) if and when Chase complied with the May 11th Order (by delivering to the Debtor a certification that reflects Chase has modified the terms of the loan to match the Stipulation Order, along with an accurate amortization schedule);
   (b) if and when Chase complied with this Order (by providing proof that the credit or adjustment described in ¶ 5, *supra*, has been made); and
   (c) the amount of sanctions due and owing to the Debtor.

   The Court may terminate this hearing in the event that the Parties stipulate that Chase has complied with the May 11th Order, that Chase has complied this Order, and that the amount of sanctions due is undisputed and has been paid.

SO ORDERED.

May 27, 2005
Rutland, Vermont

Colleen A. Brown
United States Bankruptcy Judge